

CIVIL COVER SHEET

JS 44 (Rev. 12/07) (CAND Rev 1/10)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

MIDWEST ENVIRONMENTAL DEFENSE CENTER

DEFENDANTS

U.S. Environmental Protection Agency, LISA P. JACKSON, Administrator

(b) County of Residence of First Listed Plaintiff Dane, Wisconsin (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Kristin Henry
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105 Tel. 415-977-5716

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Clean Air Act, 42 U.S.C. §§ 7401 et. seq.

Brief description of cause:

Failure to perform mandatory duties.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐ DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE". cv-11-5651-Magistrate Judge Donna M. Ryu

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE ☐ EUREKA

DATE

November 28, 2011

SIGNATURE OF ATTORNEY OF RECORD

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FILED
 2011 NOV 28
 RICHARD W. L. JSC
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

8 UNITED STATES DISTRICT COURT
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

JSC

10
 11
 12 MIDWEST ENVIRONMENTAL DEFENSE
 13 CENTER,
 14 Plaintiff,
 15 v.
 16 LISA P. JACKSON,
 17 in her official capacity as Administrator of the
 18 United States Environmental Protection Agency,
 19 Defendant.

CV Case No. 11

5694

) COMPLAINT FOR DECLARATORY
) AND INJUNCTIVE RELIEF

) (Clean Air Act, 42 U.S.C. §§ 7401 *et. seq.*)

INTRODUCTION

1. Plaintiff Midwest Environmental Defense Center brings this Clean Air Act citizen suit to compel the United States Environmental Protection Agency (“EPA”) to undertake overdue mandatory duties. Specifically, Plaintiff challenges the failure of Defendant, Lisa P. Jackson, in her official capacity as Administrator of the EPA, to perform certain mandatory duties required by the Clean Air Act, 42 U.S.C. §§ 7401-7671q. These duties include the failure to make a finding of failure to submit under 42 U.S.C. § 7410(k)(1)(B) for multiple State Implementation Plans (“SIPs”) submittal requirements for all fifty states except Mississippi, South Carolina, Tennessee, Kentucky, Florida and Alabama, as well as the District of Columbia, and Puerto Rico (“States”).¹

JURISDICTION

2. This case is a Clean Air Act citizen suit. Therefore, the Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 7604(a)(2) (citizen suits for failure to perform a non-discretionary duty required by the Clean Air Act).

NOTICE

3. On September 28, 2011, Plaintiff Midwest Environmental Defense Center mailed a letter via certified mail, return receipt requested, to Defendant Lisa P. Jackson stating that it intends to sue Defendant for the violations alleged in this Complaint regarding failure to make a finding of failure to submit Infrastructure State Implementation Plans for the 2008 ozone NAAQS. More than sixty days have passed since Plaintiff sent this notice of intent to sue letter. To date,

¹ For the purposes of this complaint, none of these allegations should be considered to apply to Guam, the Virgin Islands, American Samoa or the Northern Mariana Islands.

1 Defendant has not remedied the violations alleged in this Complaint. Therefore, an actual
2 controversy exists.

4 VENUE

5 4. Defendant EPA resides in this judicial district. This civil action is brought against an
6 officer of the United States acting in her official capacity and a substantial part of the events or
7 omissions giving rise to the claims in this case occurred in the Northern District of California.
8 The claim in this Complaint concerns EPA's failure to perform mandatory duties with regard to
9 Arizona, California, Hawaii, and Nevada. EPA Region 9, whose jurisdiction includes Arizona,
10 California, Hawaii, and Nevada, is headquartered in San Francisco. Thus several of the events
11 and omissions at issue in this action occurred at EPA's Region 9 headquarters in San Francisco.
12 Therefore, venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

13 INTRADISTRICT ASSIGNMENT

14 5. A substantial part of the events and omissions giving rise to the claims in this case
15 occurred in the County of San Francisco. Accordingly, assignment to the San Francisco
16 Division or the Oakland Division is proper pursuant to Civil L.R. 3-2(c) and (d).

18 PARTIES

19 6. Plaintiff MIDWEST ENVIRONMENTAL DEFENSE CENTER is a public interest
20 environmental organization based in Madison, Wisconsin. Midwest Environmental Defense
21 Center's mission is to protect and restore the environment, natural resources, and public health of
22
23

1 the upper Midwest by ensuring that laws designed to protect the public are applied and enforced
2 as they were intended.

3 7. Members and staff of Midwest Environmental Defense Center live, work, recreate, and
4 travel throughout the States and will continue to do so on a regular basis. Ozone in the affected
5 States threatens, and will continue to threaten, the health and welfare of Plaintiff's staff and
6 members. Midwest Environmental Defense Center staff's and members', as well as the public's,
7 ability to enjoy the aesthetic qualities and recreational opportunities is diminished by ozone in
8 the respective areas.

9 8. EPA's failure to timely perform the mandatory duties described herein also adversely
10 affects Plaintiff, as well as its staff and members, by depriving them of procedural protection and
11 opportunities, as well as information that they are entitled to under the Clean Air Act. The
12 failure of EPA to perform the mandatory duties also creates uncertainty for Plaintiff's staff and
13 members as to whether they are exposed to excess air pollution.

14 9. The above injuries will continue until the Court grants the relief requested herein.

15 10. Defendant LISA P. JACKSON is the Administrator of the United States Environmental
16 Protection Agency. In that role Administrator Jackson has been charged by Congress with the
17 duty to administer the Clean Air Act, including the mandatory duties at issue in this case.

18 19 **LEGAL BACKGROUND**

20 11. Congress enacted the Clean Air Act to "speed up, expand, and intensify the war against
21 air pollution in the United States with a view to assuring that the air we breathe throughout the
22 Nation is wholesome once again." H.R.Rep. No. 1146, 91st Cong., 2d Sess. 1,1, 1970 U.S.Code
23 Cong. & Admin. News 5356, 5356. To promote this, the Act requires EPA to set National

1 Ambient Air Quality Standards establishing maximum allowable concentrations for certain
2 pollutants, including ozone.

3 12. Adverse impacts arise from ground-level ozone (“ozone”) pollution, commonly referred
4 to as smog. Ozone represents a serious air quality issue in many parts of the United States.
5 Exposure to ozone pollution causes numerous impacts to a person’s respiratory system,
6 including asthma, pneumonia, and bronchitis, and can result in the permanent scarring of lung
7 tissue. Moreover, the detrimental effects extend beyond public health. Ozone pollution also
8 interferes with vegetation’s ability to function properly. This interference results in injuries such
9 as decreased crop yields and damage to native ecosystems.

10 13. The Clean Air Act requires each state to submit a state implementation plan for every
11 promulgation or revision of a National Ambient Air Quality Standard, within three years of that
12 standard’s promulgation or revision, that provides for the “implementation, maintenance, and
13 enforcement” of the standard. 42 U.S.C. § 7410(a)(1). These are often referred to as
14 “Infrastructure” state implementation plans. An Infrastructure state implementation plan
15 submittal must meet the requirements listed under 42 U.S.C. § 7410(a)(2). *See* 42 U.S.C. §§
16 7410(a)(2)(A)-(M).

17 14. The Clean Air Act requires EPA to determine whether any state implementation plan
18 submittal is administratively complete. 42 U.S.C. 7410(k)(1)(B). EPA must make this
19 determination by “no later than 6 months after the date, if any, by which a State is required to
20 submit the plan or revision.” *Id.*

21 15. If a state fails to submit any required state implementation plan, there is no submittal that
22 may be deemed administratively complete, and EPA must make a determination stating that the
23

1 state failed to submit the required state implementation plan. 42 U.S.C. § 7410(k)(1)(B). This is
2 referred to as a “finding of failure to submit.”

3
4
5 **CLAIM FOR RELIEF**

6 **CLAIM ONE**

7 (EPA’s Failure to find that States have not Submitted 2008 ozone National Ambient Air Quality
8 Standards State Implementation Plans)

9 16. Plaintiff incorporates by reference paragraphs 1 through 15.

10 17. Pursuant to the Clean Air Act, each state must submit an “Infrastructure” state
11 implementation plan that provides for the “implementation, maintenance, and enforcement” of a
12 National Ambient Air Quality Standard within three years of a standard’s promulgation or
13 revision. 42 U.S.C. § 7410(a)(1).

14 18. The Clean Air Act requires EPA to determine whether a state implementation plan
15 submittal is administratively complete. *See* 42 U.S.C. 7410(k)(1)(B).

16 19. If a state fails to submit any required state implementation plan, there is no submittal that
17 may be deemed administratively complete and EPA must make a determination stating that the
18 state failed to submit the required state implementation plan. *See* 42 U.S.C. § 7410(k)(1)(B).
19 This is referred to as a “finding of failure to submit.”

20 20. Thus, if a state does not submit a state implementation plan, EPA must make a finding of
21 failure to submit no later than six months after the date by which the state implementation plan
22 submittal was due. *See* 42 U.S.C. § 7410(k)(1)(B).
23

1 21. On March 12, 2008, the EPA promulgated revised National Ambient Air Quality
2 Standards for ozone. *See* 73 Fed. Reg. 16436-16514 (March 27, 2008). EPA set a new standard
3 limiting ozone concentrations to no more than 0.075 parts per million over an 8-hour period. *See*
4 40 C.F.R. § 50.15.

5 22. In accordance with Section 110(a)(1) of the Clean Air Act, States are required to submit
6 SIPs to attain and maintain the National Ambient Air Quality Standards within three years of the
7 promulgation or revision of a National Ambient Air Quality Standard. *See* 42 U.S.C. §
8 7410(a)(1). In assuring that SIPs attain and maintain the National Ambient Air Quality
9 Standards in accordance with Section 110(a)(1), States must ensure their SIPs include
10 requirements set forth under Section 110(a)(2). *See* 74 U.S.C. § 7410(a)(2). These
11 requirements, include, but are not limited to:

- 12 • Enforceable emission limits (42 U.S.C. § 7410(a)(2)(A));
- 13 • Establishment and operation of monitoring systems (42 U.S.C. § 7410(a)(2)(B));
- 14 • Enforcement programs (42 U.S.C. § 7410(a)(2)(C));
- 15 • Limits on interstate transport (42 U.S.C. § 7410(a)(2)(D));
- 16 • Assurances of adequate authority (42 U.S.C. § 7410(a)(2)(E));
- 17 • Monitoring of emissions from stationary sources (42 U.S.C. § 7410(a)(2)(F));
- 18 • Authority to exercise emergency powers (42 U.S.C. § 7410(a)(2)(G));
- 19 • Provisions that provide for the revision of SIPs (42 U.S.C. § 7410(a)(2)(H));
- 20 • Meet consultation, public notification, and Prevention of Significant Deterioration
21 (“PSD”) requirements (42 U.S.C. § 7410(a)(2)(J));
- 22 • Provide for the modeling of air quality (42 U.S.C. § 7410(a)(2)(K));
- 23 • Establish permitting fees (42 U.S.C. § 7410(a)(2)(L));

- Ensure consultation and participation by local entities (42 U.S.C. §7410(a)(2)(M)).

These requirements are collectively referred to as the “general infrastructure elements.” *See* U.S. EPA, State Implementation Plan Overview, <http://www.epa.gov/air/urbanair/sipstatus/overview.html> (last viewed Oct. 24, 2011).

23. The revised National Ambient Air Quality Standards for ozone were effective on May 27, 2008. *See* 73 Fed. Reg. 16436 (March 27, 2008). States must submit SIPs for the 2008 ozone National Ambient Air Quality Standards by no later than March 12, 2011. *See* 73 Fed. Reg. 16436, 16503 (March 27, 2008).

24. None of the States except Mississippi, South Carolina, Tennessee, Kentucky, Florida and Alabama have submitted these Infrastructure SIPs for the 2008 ozone National Ambient Air Quality Standards.

25. The Administrator is required to make a finding as to whether a State has submitted the required SIP no later than six months after the date by which the State was required to submit such a SIP. *See* 42 U.S.C. § 7410(k)(1)(B). EPA must make findings of failure to submit SIPs for the 2008 ozone National Ambient Air Quality Standards by no later than September 12, 2011.

26. EPA has not made findings that any States have failed to submit Infrastructure SIPs for the 2008 ozone National Ambient Air Quality Standard.

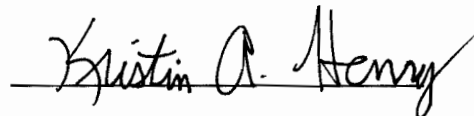
27. Thus, EPA is in violation of its mandatory duty with regard to all the states except Mississippi, South Carolina, Tennessee, Kentucky, Florida, and Alabama.

REQUEST FOR RELIEF

WHEREFORE, Midwest Environmental Defense Center respectfully requests that the Court:

- A. Declare that the Administrator is in violation of the Clean Air Act with regard to her failure to perform each mandatory duty listed above;
- B. Issue a mandatory injunction requiring the Administrator to perform her mandatory duties by certain dates;
- C. Retain jurisdiction of this matter for purposes of enforcing and effectuating the Court's order;
- D. Grant Midwest Environmental Defense Center its reasonable costs of litigation, including attorneys' and experts' fees; and
- E. Grant such further relief as the Court deems just and proper.

Respectfully submitted,



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Dated: November 28, 2011